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Martínez v. State of New Mexico: The Right to a Sufficient Education**Diane Torres-Velásquez***The University of New Mexico***Abstract**

Plaintiffs in the *Martínez v. State of New Mexico* lawsuit are 51 students, parents, and guardians from seven public school districts across New Mexico. This is a school finance case that goes beyond seeking more funds for public education to arguing that providing a sufficient education for New Mexico's 338,307 students enrolled during the 2016-2017 school year (New Mexico Public Education Department, 2017) involves more than increasing the amount of money allocated for pupils across its 89 school districts. Although the plaintiffs in this case represent low-income and high-need families of many ethnic backgrounds in New Mexico, students who are English Language Learners, and students with disabilities, the outcome has the potential to affect every student, teacher, and administrator in the state. The trial will begin on June 12th of 2017. When the case was originally filed in 2014, New Mexico's Public Education Department (NMPED)—the defendants in this case—immediately countered with a motion to dismiss. In October of 2014, as First District Court Chief Judge Sarah Singleton rejected the motion to dismiss, she also used the opportunity to declare public education a fundamental right in New Mexico. *Martínez v State of New Mexico* (2014a) has the potential to transform not only the definition of equal protection and educational equity under the law, but also to correct the discriminatory and punitive practices of current reform agendas. The author examines the possibilities of law as a form of social resistance using *Martínez v. State of New Mexico* (2014a)—a legal case on school finance—and the concept of *sufficient education* as guaranteed by the New Mexico State Constitution.

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Martínez v. State of New Mexico: The Right to a Sufficient Education

The frequent prostitution of democratic ideals to the cause of expediency, politics, vested interests, ignorance, class and “race” prejudice, and to indifference and inefficiency is a sad commentary on the intelligence and justice of a society that makes claim to those very progressive democratic ideals. (Sánchez, 1934, p. 770)

This quote by George I. Sánchez, from the 1930’s, demonstrates that the fight for a socially just society is not a new fight. In New Mexico, this fight goes back to the beginning of statehood and is one of the dividing issues that we sometimes forget or take for granted. Sánchez was a strong and determined activist who helped shape education as the marquee issue for the civil rights agenda of Mexican Americans in his lifetime (Blanton, 2014). While not well known by many Mexican Americans, Sánchez has been recognized in recent years as “the” pioneer of Mexican American rights (Tevis, 2007).

... in 1984 a retrospective honoring him at the University of California at Berkeley School of Law cited him the single most influential individual in securing equal rights through law for Mexican Americans...He is as important to equity for Mexican Americans as Booker T. Washington and W. E. B. DuBois were to equity for African Americans. (Tevis, 2007, p. 191)

Born in what is now the Barelás community in Albuquerque, New Mexico, Sánchez’s first battle for equity came from his own analysis of education as someone who had worked in this arena as a teacher, principal, and administrator. He recognized inadequate and unequitable funding in both rural and urban schools as a major failing of the state and worked hard to provide equality for all students. It is believed that the equalization plan he took a major role in developing was the first in the United States and would have served as a model to other states, had it not been sabotaged (Tevis, 2007). Sánchez collected data on the sociocultural and educational inequities of the 1930’s in New Mexico when he conducted a research project funded by the Carnegie Foundation and wrote the report in a book entitled, *Forgotten People* (Sánchez, 1940). He provided a detailed and classic account of the condition of Spanish-speaking families in New Mexico. To contextualize the data, Sánchez provided a history of the

colonization of the state's inhabitants. Blanton (2012) describes the colonial model of later Chicano scholars that Sánchez observed and named in his research. He states:

Sánchez insisted in *Forotten People* that Mexican Americans did not choose poverty and discrimination; rather, they had it forced on them by a brutal, exploitive colonial past in which Spanish, Mexican, and then United States rule consistently championed the wealthy and powerful over the poor and powerless.
(p. 6)

The fact that New Mexico continues to rank the lowest among states in terms of literacy continues to draw headlines in local newspapers. In 2016, New Mexico was ranked 50th in education and 49th in child well-being by the Annie E. Casey Foundation (Willis, 2016). New Mexico education quality in 2017 ranks 49th, according to *Education Week's* "Quality Counts" research report (Burgess, 2017).

In 1940, Sánchez was hired at the University of Texas at Austin, and left New Mexico for good, partly because of his many embattled controversies over his strong activism for racial and educational integration and equality (Blanton, 2014; Tevis, 2007). At the end of the 1950's, Sánchez was reporting that 80% of Mexican-American children spent more than a year in first grade, and only 8.5% reached twelfth grade (Blanton, 2014). As a professor of education at the UT Austin, he continued his research on educational equity and the social condition of Mexican Americans. He worked directly with community organizations and began working directly with attorneys to shape policy through the courts. It is significant to note here that throughout his career, Sánchez was a strong proponent of intercultural advocacy. In other words, he conducted research and wrote strongly in support of social and racial equality for African Americans and Native Americans (Blanton, 2014). "No Tejano supported African-American civil rights more than George I. Sánchez in the 1950's" (Blanton, 2014, p. 201).

The short list provided below gives a taste of a few of the significant legal cases in which Sánchez was directly involved. While this article does not have the scope to go into depth on all of the legal cases Sánchez designed, contributed to, or for which he wrote briefs, it is important to note that his research and collaborations with civil rights attorneys on behalf of Mexican Americans helped establish concepts that would become important for cases involving African Americans, including *Brown v. Board of Education* (1954). When studied in depth, one can see the focus on educational equity and key connections between Sánchez and individuals who

would continue to play a large role in the legal contributions supporting equality for Mexican Americans in the United States.

- *Delgado v. Bastrop, ISD (1948)* (School Desegregation)
- *Hernández v. Texas (1954)* (Jury Desegregation)
- *Hernández v. Driscoll (1957)* (School Desegregation)

While the outcomes of the cases varied—and these cases involved years of appeals which did not always end in the decisions that Sánchez originally sought, there was progress in each case. Most significantly, with *Hernández v. Texas (1954)*, Sánchez and the attorneys on the case developed a theory that was a new concept at the time which they labeled a “class apart.” One attorney for the case was Carlos Cadena from San Antonio, Texas. He relied on Sánchez to academically ground him in the ways that Mexican Americans were conveniently labeled as White, yet clearly and severely racially discriminated against for being Mexican and brown (Blanton, 2014). Cadena and Sánchez spent many hours across many late nights discussing and developing the “class apart” theory before they ever used it in court (Tevis, 2007). Cadena took courses to pursue research on the concept, and the two discussed the validity of the theory to become more comfortable with the formal argument and the supporting research. From the analysis of the case by Tevis (2007), “...the next step was ‘trying it out’; in other words, they needed a court case” (p. 197). Sánchez and Cadena were joined by a third collaborator who would become the second attorney on the *Hernández* case, Gus García.

While in 1935 “Negro” males had been granted the right to serve on juries in Texas, records in the county for *Hernández v. Texas (1954)* showed that for the past twenty-five years, no Mexican Americans had served on any jury of any kind in the county. The attorneys provided numerous examples of discrimination in the county in addition to jury selection, but the court ruled that there was no discrimination. The Appeals Court in 1952 also ruled that they found no discrimination and noted that no Supreme Court had ever addressed nationality as a “class apart” (Tevis, 2007). Sánchez and attorneys sought the support of the League of United Latin American Citizens (LULAC) and took the case to the U.S. Supreme Court. Tevis (2007) reported that a very eloquent Chief Justice Earl Warren stated in part:

... it taxes our credulity to say that mere chance resulted in there being no members of this class among the over six thousand jurors called in the past 25

years. The result bespeaks discrimination, whether or not it was a conscious decision on the part of any individual jury commissioner... (p. 199)

After the decision, Sánchez wrote, “I had long set forth, in my class, that the XIV Amendment protected against discrimination not only on the basis of ‘race, creed, color’ but also on the basis of recognition and differential treatment against a recognized ‘class apart’” (from archived notes by George I. Sánchez, in Blanton, 2014, p. 196). The U.S. Supreme Court decided to reverse the Texas decision just two weeks before *Brown v. Board of Education* was argued. Critics of *Brown* argue that there is much irony in the fact that it was a school desegregation case and that in today’s schools, the segregation of Latinos is even more pronounced than that of Blacks (Balkin, 2001; Montoya, 2001). Montoya’s (2001) analysis of the history of Chicana/o school segregation leads her to conclude that Latino students are the most segregated group in today’s society. While *Martínez v. State of New Mexico* (2014a) is not a segregation law suit, Montoya’s (2001) analysis of segregation and affirmative action points to the invisibility of the Latino population. She states:

Fast forward with me to 2001. This history of the struggle against the segregation of Chicana/o children in the Southwest has been largely erased. This jurisprudential history is not taught in law schools; consequently, Latinas/os children are not recognized as deserving subjects of this public policy. (Montoya, 2001, p. 158)

Student Rights Under the New Mexico State Constitution

If Sánchez was using his understanding of educational rights as based on the New Mexico State Constitution, he was holding very high standards. In the late 1800’s and at the turn of the 20th century, New Mexico’s forefathers drafted and re-drafted the state’s constitution. New Mexico and Arizona were intended to enter the United States as one state. Due to the insistence of New Mexicans to use Spanish in state government and education, leaders of what is now Arizona decided to break from New Mexicans and create their own state (Montez, 1973). New Mexico refused to accept a state constitution that did not include protection of the language and rights of its Spanish-speaking inhabitants. It is the only state in this country with these unique provisions. Article XII is devoted to education and guarantees a free and *sufficient* public education for New Mexico’s students; it reads:

A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.

(N.M. Constitution, Article XII § 1)

Furthermore, the New Mexico State Constitution contains the “Children of Spanish Descent Clause,” a provision that protects language education rights for English Language Learners (N.M. Constitution, Article XII, section 10). While originally written for Spanish-speaking children, this clause is now interpreted to protect the rights of students as it pertains to their home language and includes all language groups in the state. Article XII, section 10 specifically states:

Spanish-speaking children shall never be denied the right and privilege of admission and attendance in the public schools or other public educational institutions of the state, and they shall never be classed in separate schools, but shall forever enjoy perfect equality. (N.M. Constitution, Article XII § 10)

Plaintiffs, teachers, superintendents, administrators, unions, and school board members across the state have long been concerned about the funding of public education in New Mexico. Former Albuquerque Public Schools (APS) board member Dolores Griego (April 2017) testified to the current APS school board that in the late 2000’s, she and other board members had brought the intention of suing the state to the state-wide school board. The New Mexico School Board Association (NMSBA) had strongly considered suing the state at that time. In an effort to investigate the sufficiency of public education in New Mexico, the American Institutes for Research (AIR) (2008) gathered data using surveys, town hall meetings, and panel meetings with the public, educators, advocates, and policymakers. The research team aimed to formulate goals and objectives of the public schools from their input. They estimated that the state needed to increase funding of public education by 14.5% at that time (\$334.7 million in 2007-2008 dollars).

District superintendents and school board members across New Mexico knew that public schools were sorely underfunded. They wanted a suit based on *sufficient education*, a term they equated with adequate funding. Each district’s school board voted on whether or not to sue the state. When APS voted, the board members were split. When the vote was called to decide if the NMSBA would sue the state, again the votes were split. The deciding factor was

what a lawsuit would cost schools who were already reporting that they felt “amputated” due to the cuts they were being forced to make to keep their districts alive.

In the meantime, the Latino Education Task Force (LETF), a community organization focused on public education and the achievement gap for students of color, was holding an organizational retreat in the Summer of 2010. The Latino Education Task Force had created, lobbied for, and had a monumental win when the legislature passed the only Hispanic Education Act in the country and it was signed into law. At the end of 2010, the first Hispanic Education Status Report was released and the concerns over student achievement and student participation were clearly evident in the data. Parents, students, community leaders, board members, superintendents, and even an unnamed legislator approached the group on several occasions, asking if they would consider organizing a suit against the state, based on the New Mexico Constitution, sufficient education, and perfect equality. The group spent several meetings listing the concerns of the community, gathering information that had been used in prior attempts to sue the state, developing key concepts for the argument, mapping out strategy, identifying other organizational allies they would approach for support, identifying resources for shaping an argument in support of the case, and identifying key components of what they would like to see in public education when the case was won. In spring of 2011, LETF members contacted the Southwest Regional Director of the Mexican American Legal Defense and Educational Fund (MALDEF), David Hinojosa, and continued with a clear understanding that this school finance case would be much more than a case about funds.

The first identified need was for New Mexico to officially recognize public education as a human and fundamental right. Although the constitution includes unique provisions intended to protect the education of all students in New Mexico, the state’s constitution, never proclaimed public education to be a fundamental right. The LETF imagined what the authors of the state constitution might have desired for their inhabitants, given the fight to keep the Spanish language alive and the strength of native cultures and languages. The concept of sufficient education incorporated an assets-based approach to not only maintaining culture and language, but seeing these as strengths that students could use to build on their identity and further strengthen our communities and our state. For the LETF, an education sufficient for each student meant strengthening home culture and language and also teaching students to honor and live in both the world of their home culture and that of the dominant culture (for

more information on navigating the cultures of two worlds, please refer to the work of Gloria Anzaldúa, 1987; Margaret Montoya, 1994; and AnaLouise Keating, 2006). The concept of sufficient education was closely tied to that of perfect equality. The logic was that with research around ethnic studies demonstrating much higher rates of graduation, achievement, and passing grade levels, New Mexico's students were not experiencing a level of perfect equality but rather low graduation and achievement rates, due to a curriculum that did not draw on their strengths.

Parents, educators and community advocates were concerned that funds marked for bilingual education were not reaching their children. They also were concerned that the state did not seem to be monitoring students' progress in language and academic development. They knew that New Mexico valued culture and language in existing law and felt the state was not honoring those laws, but rather was violating them. One concern that became very emotional was around the recent reform initiatives that the new Governor and Secretary of Education were imposing on teachers. Parents and community advocates observed teachers in great stress, unable to take sick days when they were ill, lest it affect their teacher evaluation and school grades. They felt the sudden push for more and more testing was not helping their children's education. As the case developed and was being filed, thousands of students across the state walked out of their classrooms. Students in Santa Fe, the state's capital, marched to the Roundhouse (the state capital building). In Albuquerque and across the state, students kept each other informed, operated under a Code of Conduct of respect and order, and organized marches and protests at almost every high school, opting out of taking the Partnership for Assessment of Readiness for College and Careers (PARCC) achievement exam (Astorga-Ramos, 2015).

Underlying all of these qualitative concerns, the foundational concern was that of school finance. Also, parents and students in special education programs were convinced that their schools were not receiving the funds allocated to them from the state. In 2014, MALDEF attorneys filed *Martínez v. State of New Mexico* (2014a) as a school finance case. Plaintiffs in the case charge that although New Mexico has an equal funding formula, educational resources are not equitably distributed in the state, and that as a result, student performance is affected. *Martínez v. State of New Mexico* (2014a) charges that high-needs students, including students in

low-income families, and English Language Learners (ELL) as a group are highly affected by inadequate funding and that as a result, students are receiving an inadequate education.

School Finance

A concept that is closely related to school finance is one that became prominent in the United States in the 1990's when adequacy studies were conducted to analyze the amount of resources needed in order to produce desired educational outcomes (Jiménez-Castellanos & Topper, 2012). Most recently, courts have equated adequacy to funding equity, rather than student performance. The implied assumption is that if all schools and districts are receiving the same amount of money per student, the students will all perform equally. Jiménez-Castellanos and Topper (2013) conducted a thorough review of the literature focused on school finance and English Language Learners (ELLs). Their review addressed both the cost of providing an adequate education to ELLs and the differences among the methods used to study the sufficiency of that funding. The researchers found that current funding levels in the samples they studied across the United States are not sufficient to provide adequate resources for ELLs. They outlined cautions that need to be considered, especially when public schools are expected to prepare all students, including ELLs, to meet the demands of standardized assessments as had been required by No Child Left Behind; they recommended cost studies that specifically focused on this group of students. One area of concern that emerged from their work was the need for district and school personnel to clearly articulate the criteria for and measurement of language proficiency and to provide adequate educational resources.

One interesting finding included in the literature review was a pilot project in North Carolina that provided additional funding to the state's sixteen districts with the most academically at-risk students (Henry, Fortner, & Thompson, 2010). Districts selected for funding were allowed to apply some flexibility to spending their supplemental funds as long as they chose options from a menu of effective strategies for students labeled, "educationally disadvantaged." Educationally disadvantaged was defined as "students currently enrolled in high school who did not achieve proficiency on the state's assessments for either reading or math the year before they entered high school (eighth grade)" (Henry et al., 2010 p.186). All student samples in districts that had received supplemental funding in this pilot project did experience improved performance, although academically disadvantaged students experienced smaller gains

than all other students (Henry et al., 2010). These effects were significant. Findings revealed that high school performance gaps were reduced between districts participating in the study and other districts when districts received additional funds. Detailed information on the curriculum might prove helpful in assessing the effects of additional funding, in this case.

Education as a Fundamental Right

In 2014, MALDEF on behalf of 51 plaintiffs, both children and their parents or guardians, filed *Martínez v. State of New Mexico* (2014). The plaintiffs alleged that the public school system denied their rights under Article XII, section I (the “Education Clause”) and Article II, section 18 (the “Equal Protection” and “Due Process” Clauses). For claims that address violations of equal protection and due process, the plaintiffs include children who are economically disadvantaged, and English Language Learners. Seven districts are represented by students or parents in this lawsuit. These include Zuni, Las Cruces, Magdalena, Gadsden, Española, Santa Fe and Albuquerque Public Schools. For alleged violations of due process, the plaintiffs are students with disabilities.

The state Public Education Department (PED) attorneys followed this action by filing a Motion to Dismiss on the basis of their determination that the plaintiffs did not have standing and that the claims were not justifiable. They alleged, for example, that Mexican-American students were White, not a legitimate group, and therefore did not have standing and they moved to dismiss the case. After hearing arguments from both MALDEF attorneys for the plaintiffs and from state attorneys for the defendants, the judge denied the motion to dismiss and declared that the plaintiffs did, indeed, have standing and had legitimate concerns that needed to be addressed in court.

As laws change to address discrimination, local social movements can make important contributions to the understanding and implementation of human rights. Education rights, as written, are highly abstract and yet they are the legal discourse of social justice. By examining how global rights are appropriated at the local level, we can also learn much about how local struggles help construct global discourse (Merry, 1997). For the purpose of this article, we examine the ways that a lawsuit might affect the promise of anti-discriminatory practice in the local context and the ways global policies are reflected in the very basic desire for education to be a fundamental right granted by the powers that authorize such rights. Most educators and

families in New Mexico likely presumed that education was a fundamental right. At the global level, education is considered a human right in multiple treaties with the United Nations and other world organizations; however, the United States has yet to sign a treaty acknowledging education as a human right. Lee (2013) explains that our expectation is based upon two premises:

First, rights advocates endorse the right to education because they believe that if children receive basic primary education, they will likely be literate and numerate and will have the basic social and life skills necessary to secure a job, to be an active member of a peaceful community, and to have a fulfilling life. Second, rights advocates recognize that, despite this recognition of education as a right by the Universal Declaration of Human Rights (UDHR), for example, many children fail to benefit from even basic primary education. (p. 1)

Numerous international agreements, mandates, and documents have been written that support public education, human rights, social justice, and Earth sustainability at the global level. The Universal Declaration of Human Rights (UDHR) includes a mandate for the promotion of respect, rights and freedoms to be included in education as a part of the curriculum (United Nations General Assembly Res. 217A, 1948). Other United Nations documents, treaties, and declarations incorporate the right to public education as a human right. However, signing these documents is voluntary, and the United States has not signed any that confirm education as a human right. Implementation among countries who have signed this right into treaty is sporadic and the scope and depth of these policies often does not extend to refining values and taking action (Andrzejewski, Baltodano, & Symcox, 2009).

In fact, in the United States, there is no federal constitutional right to an education (Imber, Van Geel, Blokhuis, & Feldman, 2014). There is no obligation imposed either by the federal or state government that would require the operation of a system of education or assist parents in paying for private education for their children. Public education is considered a service, similar to providing police or fire rescue, and in legal terms is a voluntary governmental effort. Congress has provided educational assistance to states since 1787, but it was not until 1936 that its constitutional authority to tax and spend for educational activities was cemented.

Although Article XII of the New Mexico State Constitution is devoted to public education, and there are two departments dedicated to its implementation (the PED for PreK-

12 and the Department of Higher Education for post-secondary education), public education as a right was critical to this lawsuit. Public education had been declared to not be a fundamental right in the state. As part of *Martínez v. State of New Mexico* (2014a), MALDEF Regional Counsel David Hinojosa argued on behalf of families and students that public education in New Mexico was a fundamental right at the same time that he was defending the right to move this case forward. In October 2014, Judge Sarah Singleton declared from the bench that public education in New Mexico is, indeed, a fundamental right. In the declaration, formally released in writing on November 14, 2014, she solidified the importance of this right by stating:

Frankly, it is difficult to conceive of a service that the State provides its citizens that is more fundamental than the right to education. Nothing really promotes the ability to be a good citizen or to be a productive member of society more than having an education. An educated populace is not only something that is fundamental to our current well-being, it is fundamental to our future well-being. (Judge Sarah Singleton, *Martínez v. State of New Mexico*, No. D-101-CV2014-00793, 1st Judicial District Court, 2014b pp. 5-6)

Sufficient Education

While the concept of sufficient education is one that was first mentioned in the state constitution, attempts to define what that means have been limited. The discussions on its potential for framing and shaping education for the 21st century were frequent discussions in LETF meetings. The closest concepts incorporated critical race theory and transformative concepts in education and in the law. Transformative group-based theory as used in critical race theory and the law is used to address historical racial/ethnic group-based discrimination (Lawrence, 1995). This theory views antidiscrimination law as positive, transformative, and substantive for the purpose of social transformation and targets the present effects of past injustice. This approach “embraces an expansive vision that seeks to enlist the institutional power of the judicial system to play a role in societal transformation” (Jabareen, 2006, p. 1053).

Transformative group-based theory calls for a broader mandate for the role of equality and for sustaining it. A critical aspect of this theory is an anti-subordination principle, in addition to that of anti-discrimination. In other words, the equal protection demand includes a right to be free of subordination or its conditions (Crenshaw, Gotanda, Peller, & Thomas, 1995).

Achieving this principle requires balanced educational, social, economic, and political racial effects in society. Meaningful equality cannot be achieved without addressing these effects (Bell, 2000). This concept is an important concept for addressing the “Sufficient Education” clause in the New Mexico State Constitution. Given the understanding that this theory requires an assets-based balance needed for sustaining equality, it also means that the remedy is not one of “fixing” the historically oppressed victim, but rather using the assets of oppressed groups to balance society and evolve in a transformational process.

The injury of discrimination, when viewed through the lens of transformative theory, is viewed as having been afflicted on society as a whole and “seeks to right historical wrongs” (Jabareen, 2006, p. 1054). Transformative theory seeks recognition by the legal system of societal harm and advocates for positive remedies for the conditions of racial/ethnic subordination with the goal of societal transformation (Lawrence, 1995). In the cultural evolution required for anti-subordination, empowered members of society are learning the new rules and embracing a new identity.

Plaintiffs allege that beyond the financial resources that provide educational services, the state is ignoring the unique cultures and languages of the children and families of New Mexico, and that while policies do exist that honor the rich diversity and history of the state’s inhabitants, the state is choosing to ignore ethical implementation of those policies. For example, the plaintiffs in the *Martínez* case allege that bilingual students are being denied bilingual services, and that the state is ignoring all of the following: the unique Spanish Teacher Training Clause (Article XII, section 8); the Bilingual and Multicultural Education Act; the Indian Education Act; and the Hispanic Education Act. Beyond having monetary resources, *Martínez* plaintiffs allege that a sufficient education requires not only acknowledging cultural and linguistic identity, but designing and implementing a curriculum that honors the richness of such diversity. The claim states:

113. A sufficient educational system under the New Mexico constitution requires a rigorous, culturally relevant curriculum, a testing system to ensure students are learning, and a fair and effective monitoring and evaluation system of teachers and student performance. (*Martínez v. State of New Mexico*, 2014a, p.32)

This is not to say plaintiffs support the current curriculum, testing, and teacher evaluation reforms. Rather, allegations include the detrimental effects of current state education reform

on teacher recruitment and retention, including low teacher salary and the punitive value-added methods (VAM) teacher evaluation system.

Conclusion

I have attempted to demonstrate the possibilities of critical law as a form of social resistance supporting societal transformation in the understanding and defense of public education for all and in furthering educational rights. This concept surfaced immediately in the Motion to Dismiss *Martínez v. State of New Mexico* (2014b) presented by the NMPED and was addressed firmly by attorney David Hinojosa, Regional Counsel of MALDEF, and by First District Court Chief Judge Sarah Singleton when she declared public education a fundamental right in her court in October 2014. The first day of trial is scheduled for June 12, 2017.

The Historical Role of the State as Public Authority

Given the protections in the New Mexico State Constitution, the public has some reassurance that educational rights are to be protected. While *Martínez v. State of New Mexico* (2014a) involves individual plaintiffs, it is a case that has already purposefully declared education as a fundamental right for all students. The words written in the New Mexico State Constitution of 1912 are the same words that are being used to support the current fight for educational rights more than 100 years later. The words of our state's founding fathers allow the public to voice concern over state funding of public education. During the last week of the 2017 legislative session, the Santa Fe Public School District Superintendent and former New Mexico Secretary of Education Dr. Veronica García, considered calling for an emergency Snow Day (Nott, 2017). On March 16, 2017, although the temperatures were in the 80's, thousands of students, parents, teachers, administrators, school board members, community advocates and legislators participated in a rally that surrounded the New Mexico State Capitol (the Roundhouse). Participants ended the rally when they peacefully and intentionally went to the fourth floor to personally hand deliver letters to Governor Susana Martínez, asking her to provide adequate funds to stop the deep cuts of public education programs in the state. Although the Governor was not in the Roundhouse, her staff presented her with the letters. Actions such as these are an indication of the climate surrounding public education in 2017 in New Mexico.

Updates on New Mexico Politics and *Martínez v. State of New Mexico*

At this time, the New Mexico Public Education Department (NMPED) is attempting to change existing bilingual education statutes, eliminating two models of bilingual education and removing tribal rights to approve programs that use the Heritage Language model. The public hearing for this proposed change began on May 2, 2017. The hearing was standing room only with over a hundred educators, parents, and bilingual education experts flooding the room. After two hours of testimony, pleading with and scolding the NMPED for considering such a change, only a fraction of tribal leaders and bilingual education advocates had been heard (Miller, C., 2017). The NMPED decided to resume testimony in August, after the *Martínez* trial. In terms of public school finance, Governor Martinez has stopped all funding for higher education, including the university hospital, and has not informed any of the 89 districts of their budgets, even though the legislature passed a budget which she vetoed. These actions led legislators to request an Extraordinary Session to address the Governor's vetoes. Laws that did pass both the Senate and the House, such as SB269 on Anti-Institutional Racism, were also vetoed and would have supported equitable curriculum and ethnic studies for students of color, an issue pertaining to *Martínez v. State of New Mexico* (2014a).

Martínez pre-trial motions were heard on May 22 and 23, 2017. Marisa Bono is now the Southwest Regional Director of MALDEF. As of this writing, MALDEF's expert legal team beat State attempts to keep PreK and constitutional claims out of the trial.

Implications

Equally important to state-level politics and litigation are changes being proposed by our new administration at the federal level. While the New Mexico Constitution protects the rights of public school students in New Mexico, there have already been threats made to the elimination or reduction of federal grants that support public education, and there is word of the mass implementation of vouchers by our current United States Secretary of Education, Betsy DeVos. Although she could not yet provide details about the Education Department's budget, there are reports that our new President Donald Trump has planned to cut the education budget by \$9 billion, or 13.5 percent (Green, 2017). Along with these cuts, Trump has proposed to "invest" in charter schools and school vouchers, again without details other

than a proposed \$1.4 billion funding increase in the fiscal year that begins in October 2017. Given the promises Trump has made to the public, such as building a wall along the United States-Mexico border, and the deportation of millions of undocumented immigrants, it is highly likely that it will take a critically informed public to maintain any rights we have won in court battles around segregation, public education as a fundamental right, perfect equality, and a sufficient education in the last hundred years. The new administration in Washington, D.C. has sparked a wave of social awakening. For example, the Women's March on January 21, 2017 witnessed millions of peaceful protestors across the nation and "demonstrated that people from vastly different backgrounds can unite behind shared values across a spectrum of issues" (Women's March, 2017).

Martínez v. State of New Mexico (2014a) has the potential to further develop the dreams of New Mexicans along their already established rights and develop new paths to reach "Perfect Equality" that honor their culture and language. This is a lawsuit that has already purposefully declared education as a fundamental right for all students in the state, a right that was not legally proclaimed until 102 years after New Mexico became a state. The judicial process has the potential to challenge and sustain educational equality and equity. The outcome of this case will certainly affect the lives of the plaintiffs and has the potential to transform not only our definition and practice of equal protection and a sufficient education, but also discriminatory practices of current reform agendas.

Holding our power at this time in our history may involve a closer examination of the cultural assets we hold as architects for social change in a legally pluralistic world, and it would certainly require a deeper critical and rich understanding of the law. Holding our power includes sharing our histories and connecting at the local community level, exposing deep patterns of racism, sexism, and other forms of exclusion in everyday life, and using our role as academics to inform our activism. As we transition to a new administration, we may recognize and utilize the law as a tool for social resistance and social change.

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